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THE COUNCIL OF STATE GOVERNMENTS



Sentencing and Justice Reinvestment Initiative



Presentation to the Michigan House of Representatives
Criminal Justice Committee & Appropriations
Subcommittee on Corrections

February 19, 2014

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The Council of State Governments, the Justice Center, and Our Justice Reinvestment Partners

- CSG - national non-profit, non-partisan membership association of state government officials that works with members of all three branches of state government
- CSG Justice Center - provides practical, nonpartisan advice informed by the best available evidence
- Justice Reinvestment ("JR")— a data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease recidivism and increase public safety.



BJA
Bureau of Justice Assistance
U.S. Department of Justice



THE
PEW
CHARITABLE TRUSTS



Key Findings by Theme

Use of Beds	<ul style="list-style-type: none"> ❖ Length of stay and prison population are controlled by parole ❖ Guidelines limit prison sentencing and allow frequent sentencing to jail
Punishing Consistently	<ul style="list-style-type: none"> ❖ Opportunities for disparity are built in, and actual, significant disparity exists ❖ Sentence length creep costs over \$70 million annually
Reducing Criminal Behavior	<ul style="list-style-type: none"> ❖ High-risk unsupervised after jail and low-risk felons supervised like high-risk ❖ Resources may be misallocated ❖ So What? - 7,000 new crimes annually by offenders on supervision
Holding Offenders Accountable	<ul style="list-style-type: none"> ❖ Guidelines silent on violation response ❖ Forced choice between prison and post-prison supervision ❖ Uneven responses to violations, and limited adoption of swift and sure sanctions ❖ So What? - Compliance violators cost over \$150 million annually

Center for Michigan Sentencing and Justice Center

Organization of Presentation

Project Background & Primer on Michigan Sentencing

Sentencing Disparity

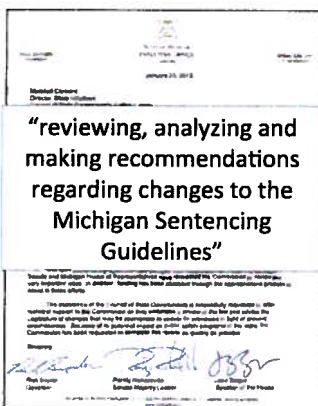
Reducing Criminal Behavior & Holding Offenders Accountable

Center for Michigan Sentencing and Justice Center

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Michigan "JR" Requested by Leadership and Contract Funded

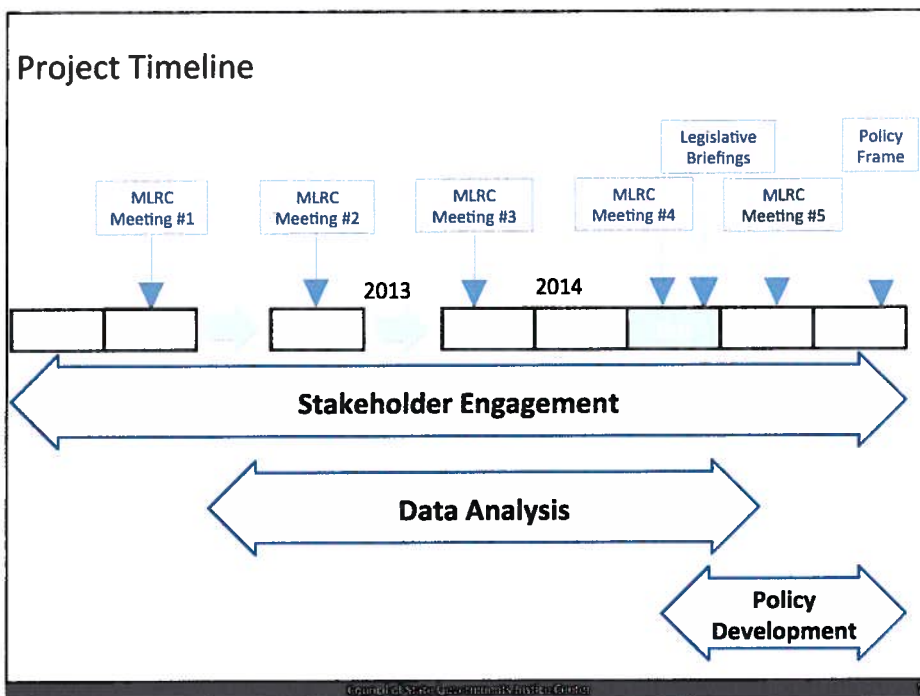


January 2013:
SB 233, Section 351

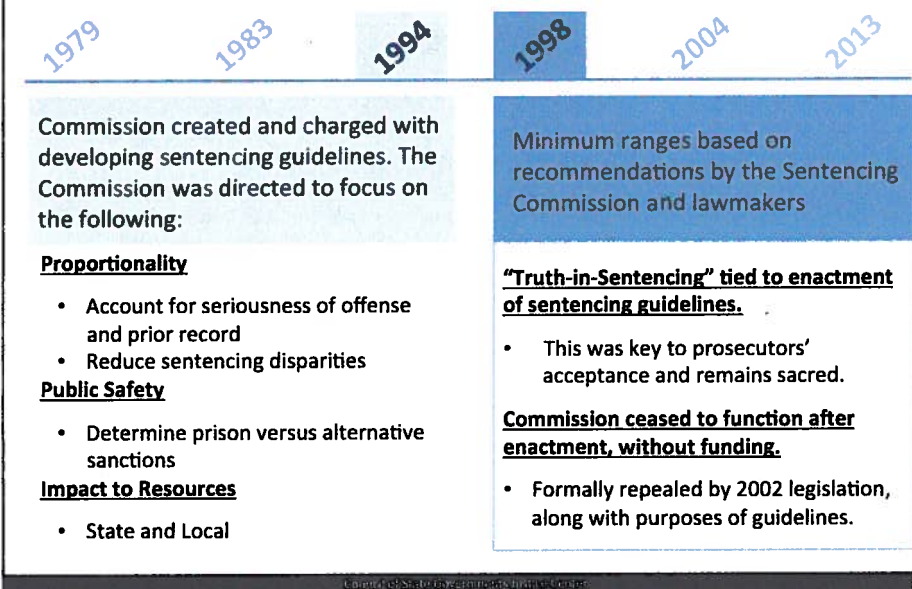
"The funds appropriated ... shall be used for a contract [between the Michigan Law Revision Commission and] the Council of State Governments to continue its review of Michigan's sentencing guidelines and practices, including, but not limited to, studying length of prison stay and parole board discretion."

May 2013-present:
Sentencing & Justice
Reinvestment Initiative

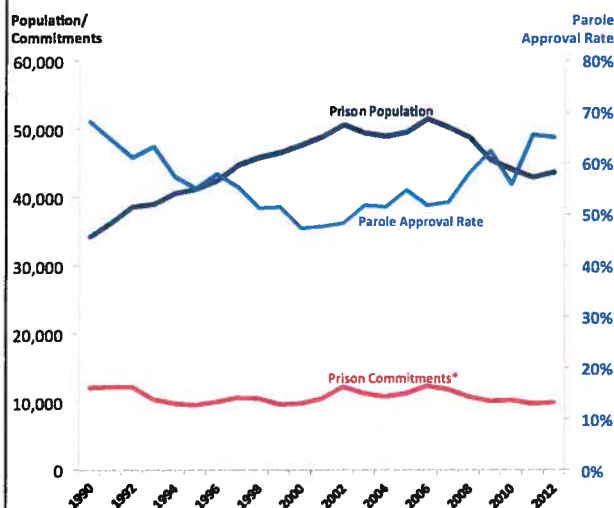
- ✓ 7.5 million data files from 10 databases
- ✓ 14 site visits
- ✓ 100 + meetings and 150 + conference calls
- ✓ 5 presentations to MLRC
- ✓ 9 presentations to prosecutors, judges, defense attorneys, victim advocates, sheriffs, county officials



After 11 Years of Judicial Guidelines, Legislature Creates a Sentencing Commission and Adopts New Guidelines



Parole Determines Prison Population While Guidelines Produce a Fairly Stable Flow of Prison Commitments



Since the early 1990s, the fluctuations in prison population and parole approval rates have been mirror opposites:

- As approval rates have declined, the prison population has risen.

* Prison commitments include new sentences, all probation violators (technical and new offense), and new offense parole violators.

Source: 2006-2011 Statistical Reports, MI Dept. of Corrections; 2008-2012 Intake Profiles, MI Dept. of Corrections; Trends in Key Indicators, MI Dept. of Corrections, February 2013.

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Finding the Correct Sentencing Range

Conviction Offense
(determines class and **grid**)

Prior Record
(determines **column** on grid)

Offense Variables
(determine **row** on grid)

Habitual Offender
(determines potential **Increases** in sentence range)

Sentencing Grid for Class C Offenses—MCL 777.64

Sentencing Grid for Class B Offenses—MCL 777.63

Sentencing Grid for Class A Offenses—MCL 777.62
Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

PRI Level	PRI Level						Offender Status
	A 0 Points	B 1-9 Points	C 10-19 Points	D 20-29 Points	E 30-39 Points	F 40-49 Points	
I 0-9 Points	35	45	70	85	135	180	
II 10-19 Points	21	43	56	87	106	169	225 1802
III 20-29 Points	12	32	61	105	127	202	270 1803
IV 30-39 Points	7	20	90	140	170	270	360 1804
V 40-49 Points	4	15	70	85	135	180	210 1805
VI 50-59 Points	2	10	45	67	108	126	262 1806
VII 60-69 Points	1	5	35	51	81	108	135 1807
VIII 70-79 Points	0	0	25	42	68	90	112 1808
IX 80-89 Points	0	0	15	27	45	60	75 1809
X 90-99 Points	0	0	10	18	30	40	50 1810

An offender falling into the highlighted cell would face a minimum sentence of 51-106 months

Source: Sentencing Guidelines Manual, MI Judicial Institute, June 2012

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Three Different Sentencing Zones in Grids

Sentencing Grid for Class F Offenses—MCL 777.67
Includes Range Calculated for Minimum Offenders (MCL 777.67(a)(1)-(2))

Offense Level	A	B	C	D	E	F	Offense Value
I	0	0	0	2	5	10	25
II	0	0	0	5	10	12	25
III	0	0	2	10	12	14	25
IV	0	2	5	12	14	17	25

Intermediate

Broad punishment type discretion

Allowable punishments:

- ☐ Up to 1 year in jail plus probation
- ☐ Jail only (1 year max)
- ☐ Probation only (5 year max)
- ☐ Fees/fines only

Straddle

Very broad punishment type discretion

Allowable punishments:

- ☐ Prison
- ☐ Up to 1 year in jail plus probation
- ☐ Jail only (1 year max)
- ☐ Probation only (5 year max)
- ☐ Fees/fines only

Prison

Very limited punishment type discretion

Allowable punishment:

- ☐ Prison

Source: Sentencing Guidelines Manual, Michigan Judicial Institute, June 2012.

OV Scoring Is a Unique & Complex Michigan Feature For Classifying the Severity of Conduct

Michigan Guidelines

2nd Deg. Mur

9 Offense Classes (with Class H the least serious)

Class A

Class B

Class C

Class D

Class E

Class F

Class G

Class H

Offense Value

I Least Severe

II

III

IV

V

VI Most Severe

All offense characteristics must be put through a scoring process to determine where along the severity continuum it falls.

Many state grids capture offense severity in one row. Michigan has an additional dimension of scoring offense variables leading to many more potential rows into which an offense may fall.

North Carolina Guidelines

10 Offense Classes (with Class I the least serious)

Offense Class

A Most Severe

B1

B2

C

D Presumptive

E

F

G

H

I Least Severe

Aggravated

Mitigated

Source: Sentencing Guidelines Manual, MI Judicial Institute, June 2012; and Structured Sentencing, Training and Reference Manual, NC Sentencing and Policy Advisory Commission, August 2004.

Michigan Guidelines Do Not Control Length of Stay

Hypothetical where desired result is 5 years in prison...

Kansas: guidelines dictate maximum sentence and available time credits.

No less than
60 months
w/ good time

Max
sent
= 71
months

No parole board, but
offenders must "earn"
their way to the
minimum.

North Carolina: guidelines dictate minimum and maximum sentence.

Min sentence
= 60 months

Max
sent
= 84
months

Michigan: guidelines dictate minimum sentence range and the Parole Board controls the actual length of stay beyond the earliest release date (ERD).

Parole board determines when released.

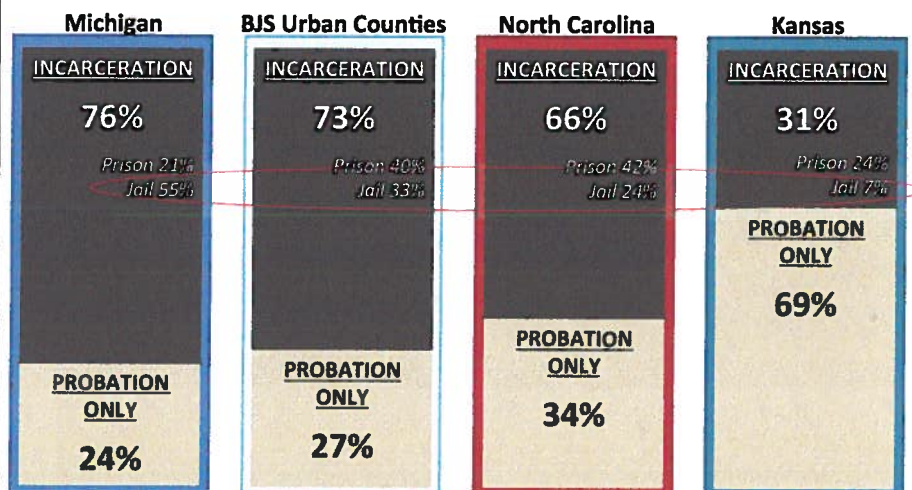
Min sentence
= 60 months

Max sentence = 180-240 months
(set in statute for specific offense)

Source: Sentencing Guidelines Manual, MI Judicial Institute, June 2012; Kansas Sentencing Guidelines Desk Reference Manual 2012, KS Sentencing Commission; and Structured Sentencing: Training and Reference Manual, NC Sentencing and Policy Advisory Commission, August 2004.

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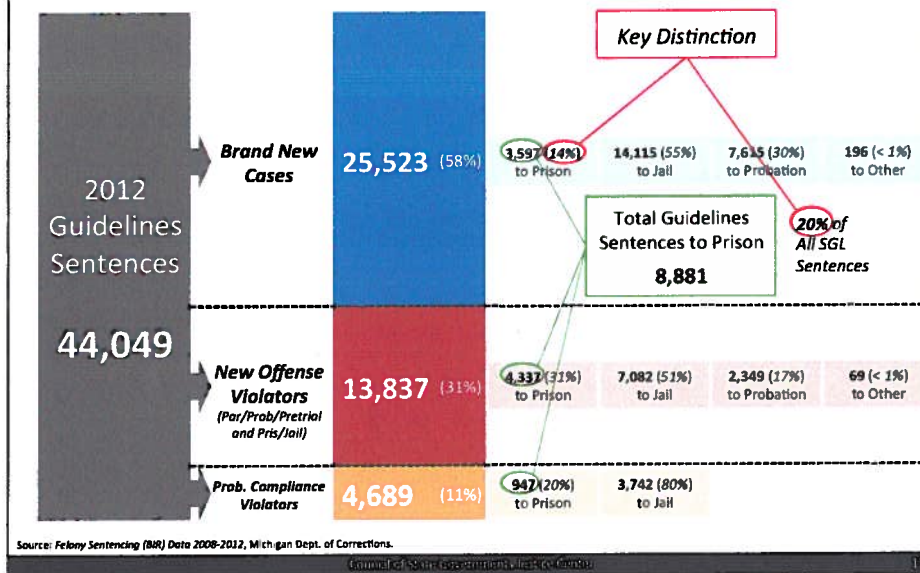
Michigan Incarcerates Similar to National Averages But More than Other Guideline States, and More Through Jail



Source: Statewide Dispositions – Fiscal Year 2012, Office of Community Alternatives, MI Dept. of Corrections, November 2012; Felony Defendants in Large Urban Counties, 2006, May 2010, Bureau of Justice Statistics; Analysis of KS Felony Sentencing Data by CSG Justice Center; Structured Sentencing Statistical Report FY 2011/12, NC Sentencing and Policy Advisory Commission.

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14% of New Guidelines Cases Lead to Prison Versus 20% of All Guidelines Cases



Key Findings by Theme

Use of Beds	<ul style="list-style-type: none"> ❖ Length of stay and prison population are controlled by parole ❖ Guidelines limit prison sentencing and allow frequent sentencing to jail
Punishing Consistently	
Reducing Criminal Behavior	
Holding Offenders Accountable	

Organization of Presentation

Project Sentencing & Punishment
Michigan Sentencing

Sentencing Disparity

Reducing Criminal Behavior &
Holding Offenders Accountable

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17

Only 11 Percent of Cases Fall in Cells with Predictable Punishment – Prison Cells

Sentencing Grid for Class F Offenses—MCL 777.67
Includes Planks Calculated for Habitual Offenders (MCL 777.2(1)(b)(i)-(iv))

Offense Level	A	B	C	D	E	F	Offense Level
I	0	0	0	2	5	10	25
II	0	0	0	5	10	12	20
III	0	0	2	10	12	14	17
IV	0	2	5	12	14	17	20

11% of Cases
But 54% of
grid cells

Prison

Very limited
punishment
type
discretion

Allowable punishment:

☐ Prison

62% of Cases

Intermediate

Broad
punishment
type
discretion

Allowable punishments:

- ☐ Up to 1 year in jail plus probation
- ☐ Jail only (1 year max)
- ☐ Probation only (5 year max)
- ☐ Fees/fines only

27% of Cases

Straddle

Very broad
punishment
type
discretion

Allowable punishments:

- ☐ Prison
- ☐ Up to 1 year in jail plus probation
- ☐ Jail only (1 year max)
- ☐ Probation only (5 year max)
- ☐ Fees/fines only

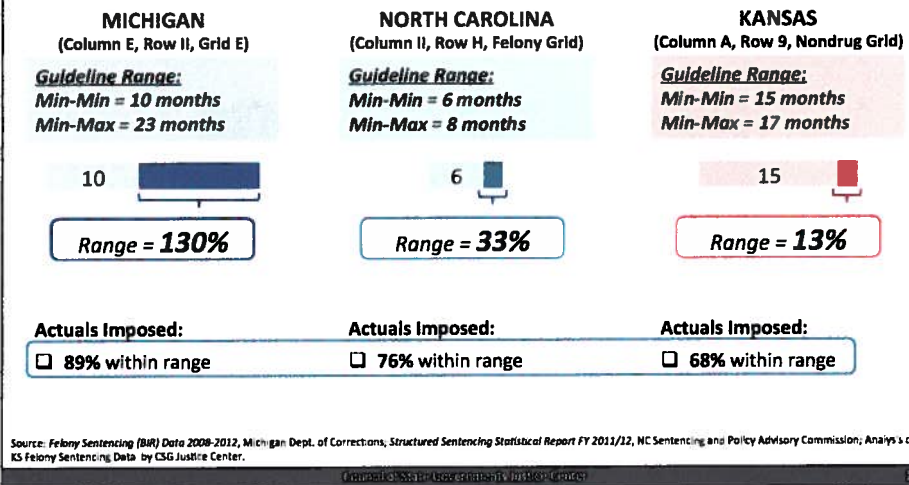
Source: Sentencing Guidelines Manual, Michigan Judicial Institute, June 2012.

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18

Michigan Ranges are Much Greater than Other Guidelines States; Fewer Departures as a Result

Each of the examples below summarizes non-habitual prison sentences from the most frequently used cell in the state's respective guidelines.



Geography Clearly Affects Sentencing

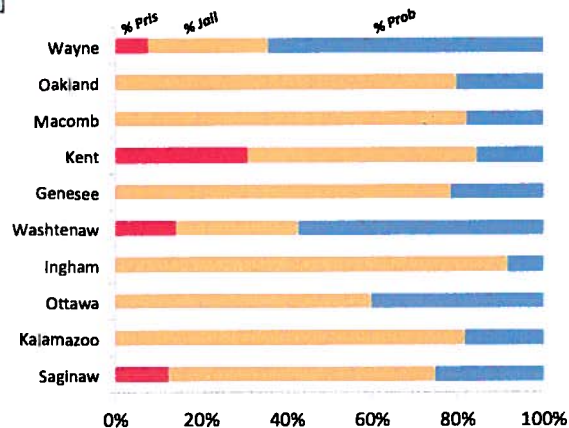
Sentencing breakdown of brand new cases in the 'E' grid 'Straddle' cells (Non Habitual)

Total 2012 Sentences = 1,463

	A	B	C	D	E	F
I				402	128	103

The 10 most populous counties accounted for 299 (74%) of the 402 sentences falling in this one straddle cell.

- 6 of the 10 counties didn't use prison at all
- 1 county used prison for almost a third of cases
- 2 counties used probation for more than half of cases



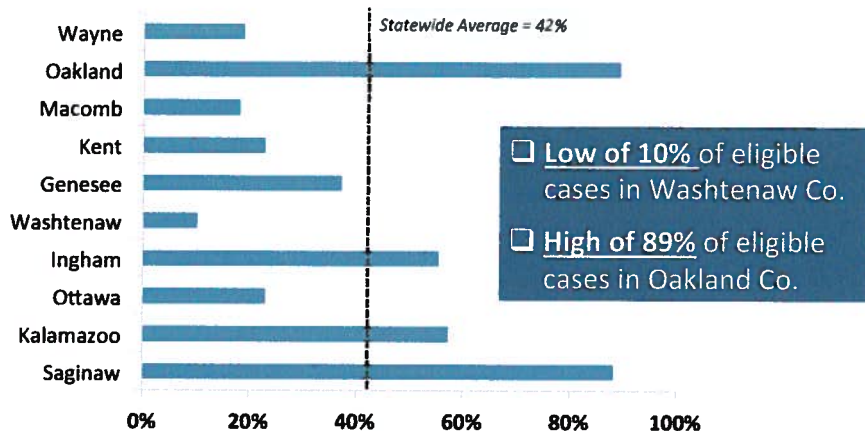
Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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20

Geography Also Affects Use of Habitual Sentencing

Percent of Eligible Cases Sentenced as Habitual Offender in 2012 (SGL Prison Bound Only)



Source: Felony Sentencing (BAR) Data 2008-2012, Michigan Dept. of Corrections.

Significant Disparity for the Same Offense in One Intermediate Sanction Cell

Breakdown of most common offense for the 'G' grid, Possession of less than 25g of Certain Controlled Substance Schedule I or II (MCL 333.7403(2)(a)(v)).

2012 Sentences = 3,409

	A	B	C	D	E	F
I	14.3%	13.6%	20.4%	17.6%	10.2%	9.2%
II	1.4%	1.1%	2.5%	2.9%	2.2%	1.8%
III	0.4%	0.2%	0.5%	0.7%	0.6%	0.7%

PRV Level A (489)	
Pris:	2
Jail:	246
Prob:	238

58 Jail Only

– Jail terms ranging from
3 days to 365 days

188 Jail & Probation

– Jail terms ranging from
1 day to 365 days
– Probation terms ranging from
30 days to 3 years

238 Probation Only

– Probation terms ranging from
30 days to 5 years

Despite falling in the same cell on the same grid for the same offense, defendants faced a wide range of possible punishments:

- As little as 3 days in jail,
- As much as 5 years on probation, or
- A combination of the two, with widely ranging lengths of jail and probation time.

Source: Felony Sentencing (BAR) Data 2008-2012, Michigan Dept. of Corrections.

Significant Disparity in One Straddle Cell

Sentencing breakdown of brand new cases in the 'E' grid **Straddle cells** (Non Habitual)

Total 2012 Sentences = 1,463

	A	B	C	D	E	F
I				402	128	103
II				359	141	69
III				77	26	
IV			69	36		
V		10	27			
VI		7	9			

Despite falling in the same cell on the same grid, **defendants punished disparately:**

- As little as a few months in jail without any supervision to follow,
- As much as 5 years on probation, or
- Minimum of up to 3 years in prison with potential for additional prison time and/or parole supervision of varying length.

Very different sentencing outcomes...

Supervised in Community

"Behind Bars"

Probation
Avg. term imposed = 24 mos.;
Range of 9-60 mos.

134

43

Prison

Avg. min term imposed = 17 mos.;
Range of 6-36 mos.

224

Jail

Avg. term imposed = 6 mos.;
Range of 1-365 days.

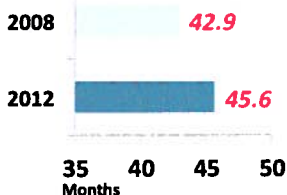
Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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24

Minimum Prison Sentence Lengths Are Increasing With the Discretion Permitted

Length of Minimum Prison Sentence



Increase for both non-habitualized AND habitualized offenders since 2008.

Increases in sentence lengths across all grids and all cell types (except Class B Straddle Cells).

2012 Prison Sentences

2.7 mos longer on average than in 2008

= additional 1,971 prisoners on a given day \times \$98 per day = Additional \$70 million each year

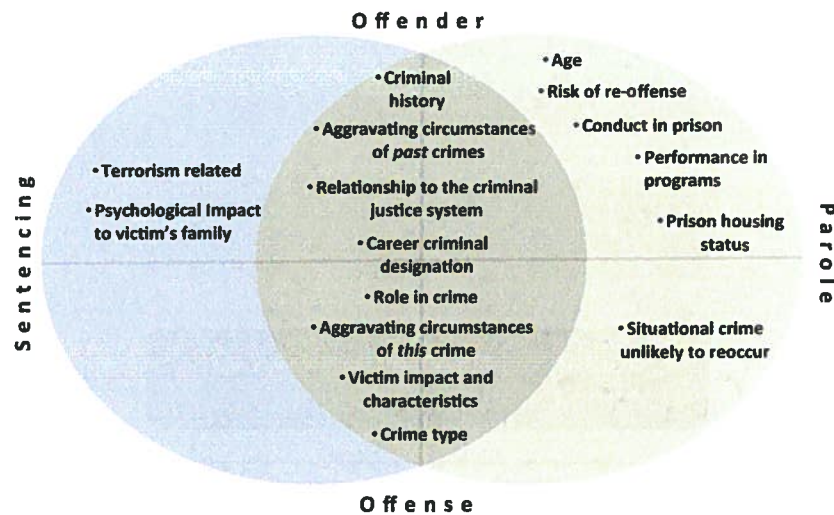
Increase in minimum sentence lengths cannot be attributed to changes in scoring of cases on the guidelines: the cases aren't falling in more serious grids, or more serious offense levels, or in worse prior history levels.

Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections, Corrections Background Briefing, December 2012, House Fiscal Agency.

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25

Preview: Parole and Sentencing Decisions Consider Many of the Same Factors – Is Consistency Affected?



Source: Sentencing Guidelines Manual, Michigan Judicial Institute, June 2012; Parole Guidelines Policy, Policy Directive Number 06.05.100, November 2008, Michigan Dept. of Corrections.
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Findings by Theme

Use of Beds	<ul style="list-style-type: none"> ❖ Length of stay and prison population are controlled by parole ❖ Guidelines limit prison sentencing and allow frequent sentencing to jail
Punishing Consistently	<ul style="list-style-type: none"> ❖ Opportunities for disparity are built in, and actual, significant disparity exists ❖ Sentence length creep costs over \$70 million annually
Reducing Criminal Behavior	
Holding Offenders Accountable	

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Organization of Presentation

Project Background & Primer on Michigan Sentencing

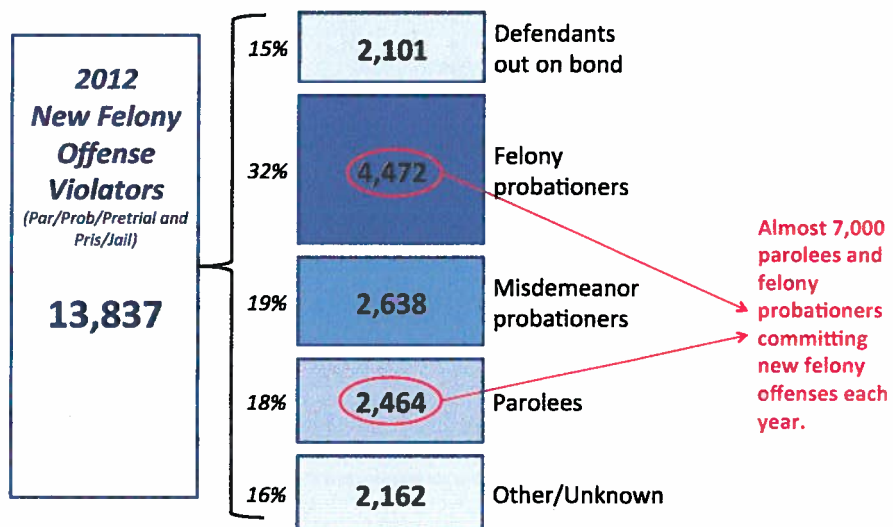
Sentencing Disparity

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27

Why It Matters in Michigan: One-Third of New Felony Offense Violators Are Felony Probationers



Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

Source of State Governmental Resources

28

Almost 1,200 Higher Risk Felons Sentenced to Jail Without Post-Release Supervision

"Brand New"

2012 SGL

**Sentences by
Prior Record
Level**

PRV Level	No prior criminal history			Significant criminal history		
	A	B	C	D	E	F
Total Sentences	7,307	4,339	6,414	4,116	1,973	1,374
Jail Only	361	230	530	602	333	246

These felons are higher recidivism risk by virtue of their criminal history (PRV) scores.

1,181 offenders with significant criminal history received sentences that involved no supervision at all (only received a period of time in jail).

– Represents 16% of total cases involving offenders with significant criminal history

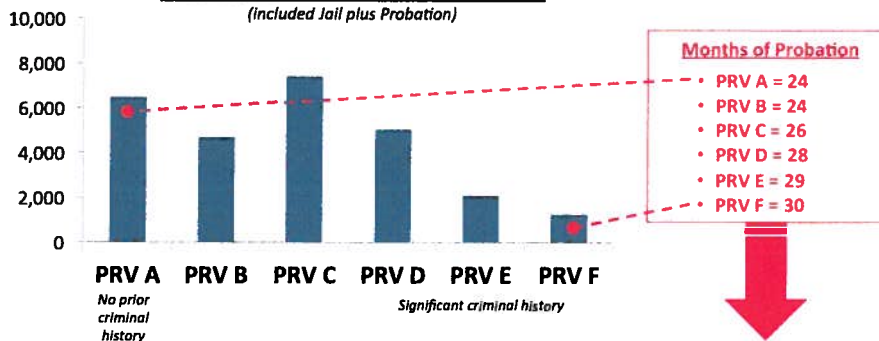
Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

Michigan State Prison and Probation Department

29

Low-Risk Probationers Supervised Almost As Long as High-Risk Probationers

2012 SGL Sentences Involving Probation
(Included Jail plus Probation)



Supervising low-risk individuals for 2 years provides little public safety benefit and uses resources that should be targeted to supervise higher risk individuals.

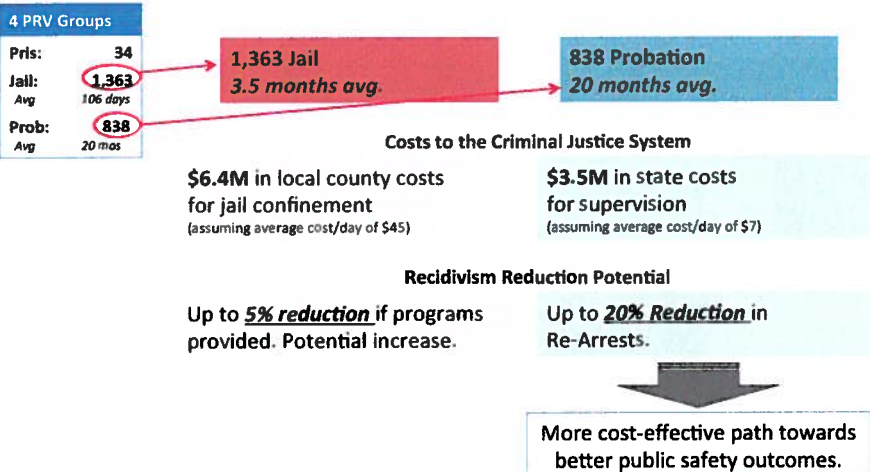
Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

Michigan State Prison and Probation Department

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Guidelines Do Not Allocate Scarce Resources to Maximize Recidivism Reduction

Breakdown of most common offense for the 'G' grid, Possession of less than 25g of Certain Controlled Substance Schedule I or II (MCL 333.7403(2)(a)(v)).

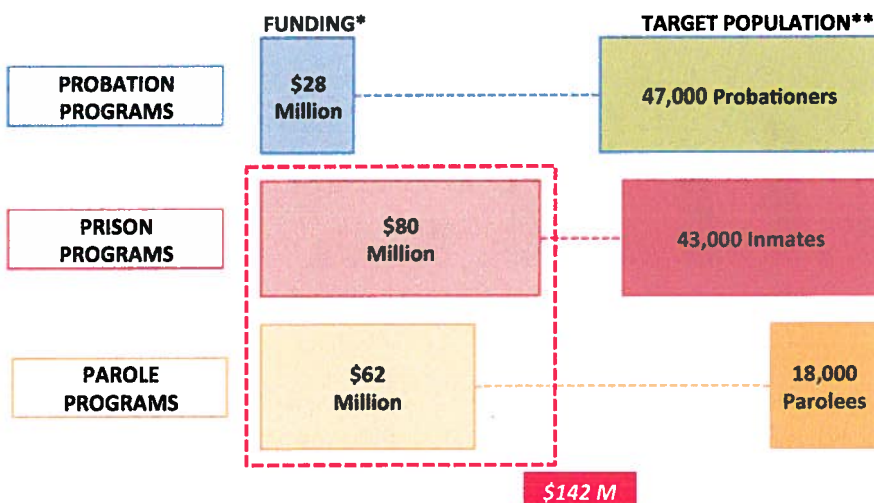


Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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67

Less Funding Devoted for Probationers Despite Higher Population and Impact on New Felony Offenses



* FY 2013 Funding

** Approximations based on 2012 population data

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68

Findings by Theme

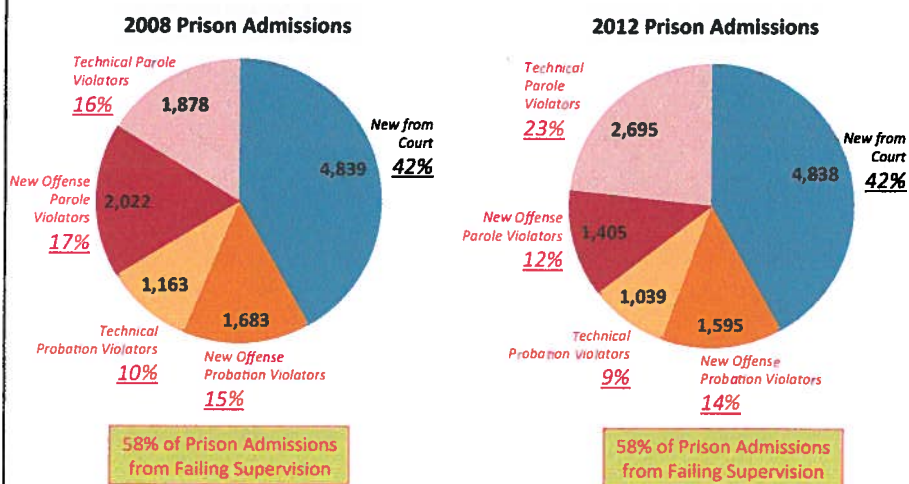
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Holding Offenders Accountable	

Michigan State Department of Corrections

34

Supervision Violators Make Up Almost 60% of All Admissions to Prison – Compliance Violators Alone Account for a Third

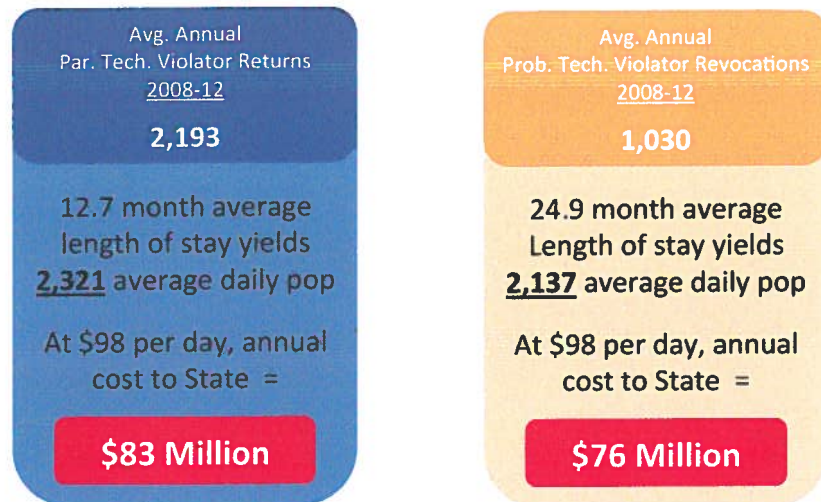
Composition of Prison Admissions: 2008 – 2012



Michigan State Department of Corrections

35

Current Cost of Incarcerating Compliance Violators Exceeds \$150 Million Annually



Source: Prison Admissions and Releases Data 2008-2012, Michigan Dept. of Corrections; Corrections Background Briefing, December 2012, House Fiscal Agency.
 Department of Corrections and Community Justice Agency

Key Factors Associated with Successful Models of Swift and Certain Sanctioning

- ☐ Clear rules and violation responses so probationer is aware of expectations and consequences
- ☐ Strict monitoring
- ☐ Prompt sanction within days of detection
- ☐ Proportionate sanctions, tied to severity and risk
- ☐ Ability to bring violators into custody
- ☐ Compulsory treatment when appropriate

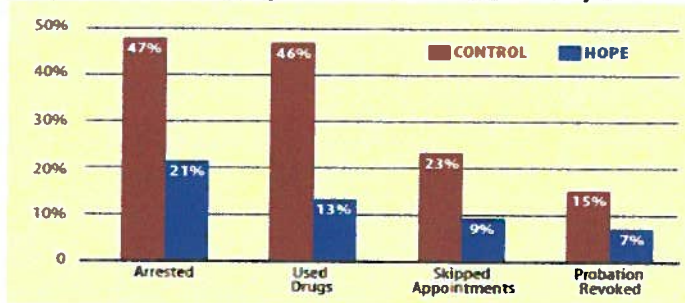
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18

Hawaii HOPE Reduces Re-Arrest, Drug Use, Jail Use

Hawaii HOPE

Intensive, random drug testing with swift, certain, and brief jail sanctions.



- Key principles of HOPE - **swift and certain probation violation response practices** - are being replicated with success in other jurisdictions.

Source: *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE*, Hawken, Angela and Mark Kleinman, December 2009.

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17

Michigan's Swift & Sure Program Unfamiliar to Many Judges; Detention Responses Unavailable to Probation Officers

Almost half of Michigan judges don't know about the State's Swift & Sure Sanctions Program:

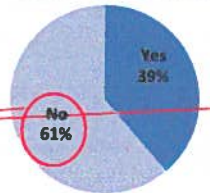
Are you familiar with SSSP?

Yes	57%
No	43%

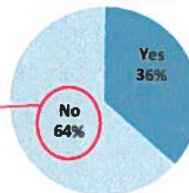
Do judges grant probation agents administrative authority to sanction probationers with brief jail stays in swift response to violations?

Almost 2/3 of respondents indicate quick jail-sanctioning authority not granted.

Probation Agent Responses



Judge Responses



- ✓ Of the agents and judges responding yes, most (98% and 81% respectively) believe these sanctions result in improved probationer behavior.
- ✓ Judges who don't grant this authority are concerned about violation of due process and do not believe the authority exists.

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18

Recap of Findings by Theme

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Council of State Governments Justice Center

40

Thank You



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41